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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

FILE: SRC 02 093 52917 OFFICE: TEXAS SERVICE CENTER DATE: JAN 09 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a pediatric neurologist and clinical neurophysiologist who is running a medical practice that currently has a gross annual income of $395,674, and seeks to employ the beneficiary as a neurophysiology laboratory manager for an unstated period.

The director denied the petition because the petitioner had failed to provide a certified labor condition application. In his denial of the petition, the director noted deficiencies in evidence but stated that the "primary issue is whether the petitioner has a Labor Condition Application on file with the Department of Labor at the time this petition was filed." In this regard, the director also specifically stated that the petitioner failed to meet the relevant requirement of 8 C.F.R. § 214.2(h)(1)(B)(1), which indicates that eligibility for H1-1B classification requires, in part, that the beneficiary be a person "for whom the Secretary of Labor has determined and certified to the Attorney General that the prospective employer has filed a labor condition under section 212(n)(1) of [the Immigration and Nationality Act]."

The director's decision was mandated by regulation, as 8 C.F.R. § 214.2(h)(4)(iii)(B)(1) specifically requires that the petitioner submit with the H-1B petition "[a] certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary." The record contains no evidence of a certified labor certificate application, despite the fact that a request for additional evidence, dated April 4, 2002, had specifically requested "the certified LCA from the Department of Labor."

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.